IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 23921 of 2003

Between:

Moraboyina Subbulu, W/o. Srinivasa Rao
R/o. Datlavaripalem Village, Nuzendla Mandal, Guntur Dist.

..... PETITIONER

AND

1 Rogiboyina Bhyulakshmi, W/o. China Koteswara Rao
R/o. Gollapalem(V), Nuzendla (M), Guntur Dist.
2 The Election Officer, Stage - 1, TalarLapalli Gram Panchayat,
Nuzendla Mandal, Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction particularly one in the nature of certiorari by calling for the records relating to the order passed in E.O.P.No. 7/2001 on the file of Election Tribunal/Junior Civil Judge, Vinukonda, dt. 13-11-2003 and to quash the same as it is illegal, arbitrary and contrary to the provisions of A.P. Panchayat Raj Act 1994 and pass

Counsel for the Petitioner:MR.D.SUDARSHAN REDDY

Counsel for Respondent No.2 : GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for Respondent No.1:M.O.Manohar Reddy

The Court made the following O R D E R:

The petitioner obtained a Rule from this Court asking the respondents in this writ petition to show cause as to why a writ in the nature of certiorari shall not be issued after calling for records relating to the order dated 13-10-2003 in E.O.P. No.7 of 2001 on the file of the Election Tribunal-cum-Junior Civil Judge, Vinukonda, and to quash the same.

The writ petitioner and the first respondent herein contested the election to the post of Sarpanch of Talarlapalli Gram Panchayat and the first respondent was declared elected to the post of Sarpanch. Questioning the election of the first respondent, the petitioner herein filed Election O.P.No.7 of 2001 before the Election Tribunal-cum-Junior Civil Judge, Vinukonda, on the ground that on the date of filing of the nomination, the first respondent was disqualified to contest the election as per the provisions of Sub-section (3) of Section 19 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act"), since the first respondent gave birth to third child on 10-07-1996 i.e. after the cutoff date mentioned in the Act. Though the petitioner raised an objection before the second respondent that the first respondent is disqualified as per the provisions of the Act to contest the election for her having three children, the second respondent accepted the nomination of the first respondent, and therefore, election of the first respondent is liable to be set aside.

The first respondent contested the election petition by filing a counter opposing the claim of the petitioner and it is stated that on the date of scrutiny of nominations, all the nominations were found valid and the petitioner did not raise any objection before the second respondent during scrutiny against the candidature of the first respondent. A few days prior to the elections, there were group clashes between the

villagers of Talarlapalli and Datlavaripalem, which resulted in filing criminal cases and relations were strained between the two villages and the village elders of Talarlapalli decided to support the candidature of a person belonging to Gollapalem to defeat the candidate belonging to Datlavaripalem, and as the first respondent belongs to Gollapalem, the village elders of Talarlapalli and Gollapalem came to an understanding to support the first respondent in the election, and the other candidates belonging to these two villages had withdrawn from the contest in accordance with the said understanding, and the petitioner having realized that she has got absolutely no chances to succeed in the election, resorted to foul methods to capture the Sarpanch post, managed the Revenue officials and got created a false birth certificate as if the first respondent gave birth to the third child on 10-07-1996. It is further stated that first respondent gave birth to the third child on 06-01-1995 and in December, 1995, she underwent tubectomy operation, and there is no scope to give birth on 10-07-1996.

The second respondent filed a counter stating that the petitioner has not raised any objection either orally or in writing before him alleging that the first respondent is having three children and as such, she is disqualified to contest the elections. It is further stated that acceptance of first respondent's nomination is proper and therefore, the result of election has not been materially affected.

Basing on the pleadings of both parties, the Tribunal framed the following points for determination.

1. Whether this Tribunal is competent to decide the constitutional validity of A.P.Panchayat Raj Act, 1994 or Rules of A.P.Panchayat Raj Rules, 1995.

2. Whether this petition is bad for non-joinder of necessary parties?

3. Whether this Tribunal has no jurisdiction to entertain this election petition?

4. Whether the third child of first respondent by name Ragiboyina Veera Venkata Rao was born on 10-07-1996?

5. Whether the petitioner is entitled for the reliefs

as prayed for?

6. To what relief?

Both parties adduced oral as well as documentary evidence to substantiate their respective claims. On appreciation of the entire evidence on record, the Tribunal dismissed the Election O.P holding that the petitioner failed to prove that the first respondent gave birth to the third child on 10-07-1996. Aggrieved by the said order, the present writ petition has been filed.

In this writ petition, this Court is concerned only with regard to the findings arrived at by the Tribunal on point No.4.

The case of the petitioner is that the first respondent is disqualified to contest the election as she gave birth to third child on 10-07-1996 i.e. after the cutoff date mentioned in the Act, which fact was denied by the first respondent. To prove their respective contentions before the Tribunal, petitioner examined herself as P.W.1 and examined P.Ws.2 to 5 apart from marking Exs.A1 to A6. In rebuttal, the first respondent examined herself as R.W.1 and examined R.Ws. 2 to 7 apart from marking the documents Exs.B1 to B3. P.Ws. 1 and 2 who are the petitioner and her husband stated that the first respondent gave birth to the third child on 10-07-1996 i.e. after the cutoff date mentioned in the Act and hence, the first respondent is disqualified to contest the election as per the provisions of Section 19(3) of the Act. P.Ws. 3 and 4 supported the case of the petitioner stating that the third child was born to the first respondent in the year 1996. Ex.A1-birth certificate of the third child of the first respondent was issued by P.W.5 the Mandal Revenue Officer, Nuzendla, basing upon the entries made in the Births and Deaths Register maintained by the Village Administrative Officer of Talarlapalli village. Admittedly, the said Births and Deaths Register was not made as part of the record in O.P before the Tribunal, and the parties were not given an opportunity to prove the correctness of the Births and Deaths Register. The Tribunal gave a finding that the Births and Deaths Register of Gollapalem village was not maintained properly as per the provisions of Section 8 of the Registration of Births and Deaths Act, 1969, and held that it is not considering Ex.A1 issued by P.W.5 based on entries made in the said register, as it is not proved

as to who has made entries pertaining to the date of birth entry of the third child of the first respondent and as P.W.5 himself admitted in his cross-examination that there was no signature of the Village Administrative Officer in the register pertaining to the month of July. It is well settled that unless a document is marked and the genuineness of the same is disproved, a finding regarding the correctness of the entries made therein cannot be arrived at, particularly in an election petition filed questioning the validity of the election. But, the Tribunal went on giving a finding that what was recorded in the said register is not correct and the same was not maintained properly by following the procedure as laid down under the Registration of Births and Deaths Act, 1969, without calling for the said Register from the concerned.

In view of the same, the order passed by the Election Tribunal dismissing the election petition holding that the Births and Deaths Register was not maintained properly under the provisions of the Registration of Births and Deaths Act, 1969 and the petitioner failed to prove the genuineness of the same, cannot be countenanced and suffers from incurable legal infirmities, as the Births and Deaths register was not marked in the O.P and the petitioner was not given an opportunity to adduce evidence to prove the genuineness of the same.

Learned counsel for both the sides are unanimous to remand the matter and permit the parties to lead evidence after summoning the above register.

Under these circumstances, the impugned order is set aside and the matter is remanded to the Tribunal for fresh disposal permitting the parties summoning for the Births and Deaths Register and on such production, giving an opportunity to the parties to lead evidence about the correctness of the entries made therein.

The writ petition is accordingly allowed. No order as to costs.

09-07-2004

vrn

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday, the Ninth Day of July, Two thousand and Four.

To

1 The Election Officer, Stage - 1, TalarLapalli Gram Panchayat,
Nuzendla Mandal, Guntur Dist.

2 Two C.Cs to the Government Pleader for Panchayat Raj &

Rural Development, High Court Buildings, A.P., Hyderabad

(OUT)

3 Two C.D copies